IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
First Appeal No. 561/2007
Kamaji Malhari Kamble (dead), 1. Sambhaji Kamaji Kamble and others vs. The State of Maharashtra and others.

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

CORAM : A.P. Lavande & R.V.More,JJ
DATE : 3.8.2007

Heard Mr. S.U.Nemade, the learned counsel for the appellants.

2. This appeal has been filed by the appellants taking exception to the Judgment and order dated 7.7.2006 passed by the learned Civil Judge, Senior Division, Pusad in Land Acquisition Case No. 520/2002. The reference court firstly held that reference was barred by limitation and thereafter chose to dismiss the reference on merits. It is well settled that if the reference is barred by limitation, the reference court has no jurisdiction to entertain the reference on merits and give findings thereon. Since the reference court has held that reference was barred by limitation the judgment given by the reference court cannot be termed as award in terms of Section 26 of the Land Acquisition Act and, therefore, the appeal under Section 54 of the Act is not

maintainable. In such a situation the only remedy available to the claimant is to challenge the order rejecting reference on the ground of limitation.

3. In view of the above position, Mr. Nemade, the learned counsel for the appellants seeks leave to withdraw the appeal with liberty to file appropriate proceedings against the impugned Judgment and order since the appeal is not maintainable. The appellants are allowed to withdraw the appeal. Consequently, the appeal stands dismissed as withdrawn. The appellants are at liberty to avail of appropriate remedy against the impugned judgment and order as may be available in law.

Registrar (J) to refund appropriate court fees to the appellant if permissible under the rules.

Judge **Judge**

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